



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BON SECOURS MERCY HEALTH PETERSBURG, LLC FOR BON SECOURS - SOUTHSIDE MEDICAL CENTER EPA ID No. VAR000518456

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Bon Secours Mercy Health LLC's Bon Secours - Southside Medical Center (formerly owned and operated by Petersburg Hospital Company, LLC d/b/a Southside Regional Medical Center) for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
6. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
7. "LQG" means large quantity generator, and prior to April 8, 2018, means a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. As of April 8, 2018, it means a hazardous waste generator that generates any of the following amounts in a calendar month: 1000 kilograms (2200 pounds) or greater of non-acute hazardous waste, or greater than 1 kilogram (2.2 pounds) of acute hazardous waste, or greater than 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e). *See* 40 CFR § 260.10.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "BSMHP" means Bon Secours Mercy Health Petersburg, LLC a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. BSMHP is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "SMC" or "Facility" means Bon Secours - Southside Medical Center, the Hospital currently owned and operated by Bon Secours Mercy Health Petersburg, LLC (formerly owned and operated by Petersburg Hospital Company, LLC d/b/a Southside Regional Medical Center).

15. "SQG" means a small quantity generator, and prior to April 8, 2018, means a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. As of April 8, 2018, it means a hazardous waste generator that generates any of the following amounts in a calendar month: greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2200 pounds) of non-acute hazardous waste, and less than or equal to 1 kilogram (2.2 pounds) of acute hazardous waste, and less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e). *See* 40 CFR § 260.10.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. BSMHP owns and operates SMC, in Petersburg, Virginia. Operations at SMC are subject to the Virginia Waste Management Act and the Regulations.
2. BSMHP submitted a RCRA Subtitle C Site Identification Form (received May 10, 2013) that gave notice of regulated waste activity at SMC as an LQG of hazardous waste. BSMHP was issued EPA ID No. VAR000518456. In a subsequent form (received May 24, 2017), PCH gave notice as an SQG of hazardous waste at SMC.
3. During SMC's medical operations, BSMHP generates solid waste that is both solid waste and hazardous as follows:

Hazardous Wastes

Pharmaceutical Wastes – D001, D002, D007, D009, D010, D011, D022, D024, P001, P075, P188, U010, U034, U035, U058, U112, U129, U132, U150, U188, U200, U205, U236

Medical Aerosols – D001

Spent Paint Aerosols – D001, D005, D006, D007, D008, D035

Waste Corrosive Liquids – D001, D002, D010, U204

Waste Flammable Liquids – D001, D004, D005, D006, D007, D008

Silver Nitrate, Hydrogen Peroxide – D001, D011

Universal Wastes Spent Lamps and Batteries

4. On November 16, 2018, DEQ PRO staff conducted a Compliance Evaluation Inspection (CEI) of SMRC. The CEI was conducted to evaluate Facility compliance with applicable

Virginia Hazardous Waste Management Regulations (VHWMR). Southside Regional Medical Center is identified in the RCRA Information System database as a Small Quantity Generator (SQG) of hazardous waste. At the time of the inspection, SMC was operating as a Large Quantity Generator (LQG) of hazardous waste.

5. During the November 16, 2018 CEI, DEQ staff made the following observations followed by the appropriate legal citation:

- a) SMC is currently identified in the RCRA Information System database as a Small Quantity Generator, and was observed to have inaccurately determined its generator category. SMC places both non-acute and acute hazardous pharmaceutical wastes in the same hazardous waste accumulation containers. According to SMC training documents observed by DEQ staff and statements provided by SMC staff, the acute wastes (individual waste pills or medications) are placed in an individual zip-lock like packaging, sealed, and marked prior to being placed in the eight-gallon hazardous waste containers to maintain separation of acute and non-acute hazardous waste medication. Training slides of this segregation viewed during the inspection did not also include containers, blister packs, or PPE that would be P-listed waste (acute hazardous residue in the packaging of the Coumadin, Warfarin, nicotine, other acute waste containers). SMC is co-mingling waste that contain acute hazardous waste residue within the accumulation areas without separation. Upon a review of hazardous waste manifest data and land disposal restriction (LDR) data, the amounts of P-listed waste weights were not documented separately from other non-acute hazardous waste weights to support SMC's determination of small quantity generator status. SMC did not maintain waste calculation logs or waste tracking logs at the satellite accumulation areas to track the amount of P-Listed waste being generated.

40 CFR Part 262.13 states, "A generator must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in §260.10 of this chapter... (b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute-hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following: (1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in a calendar month;"

- b) SMC did not notify DEQ of the change of generator status to LQG. SMC updated its generator status from LQG to SQG on May 24, 2017; however, SMC was continually operating as an LQG.

9 VAC 20-60-315.D of the VHWMR states, "Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record."

- c) SMC updated generator status from LQG to SQG on May 24, 2017. Prior to May 24, 2017, SMC reported as an LQG since May 10, 2013. SMC did not have a copy of the 2016 Biennial Report on file at the time of the inspection.

40 CFR §262.40(b) states, "A generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report."

- d) Based on a search in DEQ records and the EPA RCRA Info database, SMC did not file a Biennial Report in 2016 (for 2015 LQG generation). In addition, SMC filed a Biennial Report on March 14, 2018 (past the March 1 deadline of the reporting year). Upon review of the 2018 Biennial Report for 2017 LQG activities, SMC did not accurately reflect the waste generation at the Facility. The 2018 Biennial Report data reflects 2 pounds of pharmaceutical waste (D002 waste code) and no other waste generation during calendar year 2017.

40 CFR §262.41(a) states, "A generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must complete and submit EPA Form 8700-13 A/B to the Regional Administrator by March 1 of the following even-numbered year and must cover generator activities during the previous year."

- e) The initial copy of hazardous waste manifest #001219382 VES had a ship date of August 17, 2018. SMC did not have a final, return copy of the manifest from the Facility's TSDF. SMC did not have documentation that an Exception Report was generated for return manifest that was shipped over 45-days.

40 CFR §262.42(a)(2) states, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §261.31 or §261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include: (i) A legible copy of the manifest for which the generator does not have confirmation of delivery; (ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts."

- f) Upon review of SMC's hazardous waste manifests, hazardous waste manifest #005273463SKS (dated 2/29/16) and hazardous waste manifest #005306130SKS (dated 7/14/16) indicated a Facility generator EPA ID number of VAD07453526. This EPA ID number was associated with the former location of Southside Regional Medical Center, located at 801 S. Adams Street, in Petersburg, Virginia. All other hazardous waste manifests utilized the current Facility EPA ID number (VAR000518456) located at 200 Medical Park Boulevard, Petersburg, Virginia.

40 CFR §262.20 (a)(1) states, "A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part."

- g) DEQ staff observed open, 8-gallon black hazardous waste satellite accumulation containers in the following satellite accumulation areas (SAAs): Electro-physiology Lab, 4-East Medical Room #2, and the second floor Same Day Surgery Medical Room 1. Personnel were not observed to actively utilizing the open containers (i.e adding waste) at the time of the observation

40 CFR §262.15(a)(4) states, "A container holding hazardous waste must be closed at all times during accumulation, except: (i) When adding, removing, or consolidating waste; or (ii) When temporary venting of a container is necessary (A) For the proper operation of equipment, or (B) To prevent dangerous situations, such as build-up of extreme pressure."

- h) SAA hazardous waste containers located throughout SMC were not labeled with a description of content hazard.

40 CFR §262.15(a)(5)(ii) states, "(5) A generator must mark or label its container with the following:.. (ii) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704)".

- i) Seven of the eight observed 8-gallon, black hazardous waste containers in the hazardous waste central accumulation area (CAA) were not labeled with a description of content hazard.

40 CFR §262.17(a)(5)(i)(B) states, "(5) Labeling and marking of containers and tanks—(i) Containers. A large quantity generator must mark or label its containers with the following:... (B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);"

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- j) DEQ staff observed six 6-foot spent fluorescent lamps containerized in a 55-gallon drum in the universal waste storage shed. The spent lamps were protruding out of the 55-gallon drum. DEQ staff observed two 4-foot cardboard boxes of universal waste lamps that had an opening in the side of container.

40 CFR 273.13 (d)(1) states, “(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”

- k) DEQ staff observed one 55-gallon drum containing six 6-foot spent fluorescent lamps accumulating in the universal waste accumulation shed. Neither the lamps nor the drum were labeled.

40 CFR 273.14(e) states, “Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

- l) DEQ staff observed one small cardboard box of spent batteries in the universal waste storage shed without a label describing the universal waste type.

40 CFR 273.14(a) states, “Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies);”

- m) SMC did not have documentation that the Facility’s contingency plan was submitted to local fire, police and emergency responders.

40 CFR §262.262(a) states, “The large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.”

- n) SMC did not update the contingency plan to include the current designated emergency coordinator.

40 CFR §262.263(d) states, “The contingency plan must be reviewed, and immediately amended, if necessary, whenever: (d) The list of emergency coordinators changes; or...”

- o) SMC did not have documentation that arrangements with local fire, police and emergency responders was attempted or declined.

40 CFR §262.256(b) states, “The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.”

6. On December 27, 2018, the Department issued NOV No. 2018-12-PRO-601 to BSMHP citing them for the violations observed by DEQ staff during the November 16, 2018 CEI.
7. On February 19, 2019 the Department met with BSMHP to discuss the violations cited in the December 27, 2018, NOV. The only item that was not corrected is the completion of the most recent Biennial Report and documentation on making the contingency plan available to emergency responders.
8. Based on the results of the November 16, 2018 inspection, the February 19, 2019 meeting, and subsequent documentation submitted by BSMHP, the Board concludes that BSMHP has violated 40 CFR §262.13(b)(1), 9 VAC 20-60-315.D, 40 CFR §262.40(b), 40 CFR §262.41(a), 40 CFR §262.42(a)(2), 40 CFR §262.20(a)(1), 40 CFR §262.15(a)(4), 40 CFR §262.15(a)(5)(ii), 40 CFR §262.17(a)(5)(i)(B), 40 CFR §273.13(d)(1), 40 CFR §273.14(e), 40 CFR §273.14(a), 40 CFR §262.262(a), 40 CFR §262.263(d), 40 CFR §262.256(b) as described in paragraph C(5) above.
9. BSMHP has submitted documentation that after Department review verifies that the violations described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders BSMHP, and BSMHP agrees to pay a civil charge of \$29,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

BSMHP shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, BSMHP shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BSMHP for good cause shown by BSMHP, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, BSMHP admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. BSMHP consents to venue in the Circuit Court of Chesterfield County for any civil action taken to enforce the terms of this Order.
5. BSMHP declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein, except that BSMHP reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of BSMHP. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by BSMHP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. BSMHP does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BSMHP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BSMHP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BSMHP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the BSMHP intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BSMHP.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after BSMHP has completed all of the requirements of the Order;
 - b. BSMHP petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BSMHP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BSMHP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of BSMHP certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind BSMHP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BSMHP.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, BSMHP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of July, 2021.

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

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Bon Secours Mercy Health Petersburg, LLC voluntarily agrees to the issuance of this Order.

Date: 7/14/2021 By: [Signature], President
(Person) (Title)
Bon Secours Mercy Health Petersburg, LLC

Commonwealth of Virginia

City/County of Petersburg

The foregoing document was signed and acknowledged before me this 14th day of July, 2021, by D. John Emery who is President of Bon Secours Mercy Health Petersburg, LLC, on behalf of the company.

[Signature]
Notary Public

7738798
Registration No.

My commission expires: 10/31/21

Notary seal:

